

AMENDED IN SENATE JULY 19, 2001

AMENDED IN SENATE JULY 3, 2001

AMENDED IN SENATE JUNE 20, 2001

AMENDED IN ASSEMBLY MAY 10, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 874

Introduced by Assembly Member Horton
(Coauthor: Senator Vincent)

February 22, 2001

An act to amend Sections 12209, 17053.57, and 23657 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 874, as amended, Horton. Insurance taxation: credit.

Existing insurance tax law requires every insurer, as defined, doing business in this state, to annually pay a tax on gross premiums, as specified, at the rates and subject to the deductions provided by law. Except as otherwise provided, the rate of tax to be applied to the basis of the annual tax in respect to each year is 2.35%. Existing insurance tax law, and the Personal Income Tax Law and the Bank and Corporation Tax Law, authorize, until January 1, 2002, a credit in an amount equal to 20% of a qualified deposit, as defined, made into a community development financial institution, as defined.

The bill would extend the operation of the credits until January 1, 2005, and would instead apply the credits to a qualified “investment.” The bill would *also* make related changes.

The bill would state the intent of the Legislature in enacting these provisions.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *It is the intent of the Legislature to provide tax*
2 *credits through the California Organized Investment Network*
3 *within the Department of Insurance for investment incentives to*
4 *support the economic needs of California’s underserved*
5 *communities including, but not limited to, affordable housing,*
6 *employment, and economic development.*

7 SEC. 2. Section 12209 of the Revenue and Taxation Code is
8 amended to read:

9 12209. (a) For each year beginning on or after January 1,
10 1999, and before January 1, 2005, there shall be allowed as a credit
11 against the amount of tax, as defined in Section 28 of Article XIII
12 of the California Constitution, an amount equal to 20 percent of the
13 amount of each qualified investment made by a taxpayer during
14 the year into a community development financial institution.

15 (b) For purposes of determining any tax that may be imposed
16 under Section 685 of the Insurance Code on a taxpayer not
17 organized under the laws of this state, the amount of the credit
18 allowed by subdivision (a) shall be treated as a tax paid under
19 Section 12201 or Section 28 of Article XIII of the California
20 Constitution.

21 (c) Notwithstanding any other provision of this part, no credit
22 is allowed under this section unless the California Organized
23 Investment Network of the Department of Insurance, or its
24 successor, certifies that the investment described in subdivision (a)
25 qualifies for the credit under this section and certifies the total
26 amount of the credit allocated to the taxpayer pursuant to this
27 section. The aggregate amount of qualified investments made by
28 all taxpayers pursuant to this section, Section 17053.57, and
29 Section 23657 shall not exceed ten million dollars (\$10,000,000)



1 for each calendar year. However, if the aggregate amount of
2 qualified investments made in any calendar year is less than ten
3 million dollars (\$10,000,000), the difference may be carried over
4 to the next year, and any succeeding year during which this section
5 remains in effect, and added to the aggregate amount authorized
6 for those years.

7 (d) The community development financial institution shall do
8 all of the following:

9 (1) Apply to the California Organized Investment Network
10 within the Department of Insurance, or its successor, for
11 certification of its status as a community development financial
12 institution.

13 (2) Apply to the California Organized Investment Network
14 within the Department of Insurance, or its successor, on behalf of
15 the taxpayer for certification of the amount of the investment and
16 the credit amount allocated to the taxpayer, obtain the certification,
17 and retain a copy of the certification.

18 (3) Obtain the taxpayer's California company identification
19 number for tax administration purposes and provide this
20 information to the California Organized Investment Network
21 within the Department of Insurance, or its successor, with the
22 application required in paragraph (2).

23 (4) Provide an annual listing to the board, in the form and
24 manner agreed upon by the board and the California Organized
25 Investment Network within the Department of Insurance, or its
26 successor, of the names and taxpayer's California company
27 identification numbers of any taxpayer who makes any withdrawal
28 or partial withdrawal of a qualified investment before the
29 expiration of 60 months from the date of the qualified investment.

30 (e) The California Organized Investment Network within the
31 Department of Insurance, or any successor thereof, shall do all of
32 the following:

33 (1) Accept applications for certification from financial
34 institutions and issue certificates that the applicant is a community
35 development financial institution qualified to receive qualified
36 investments.

37 (2) Accept applications for certification from any community
38 development financial institution on behalf of the taxpayer and
39 issue certificates to taxpayers in an aggregate amount that may not
40 exceed the limit specified in subdivision (c). The certificate shall

1 include the amount eligible to be made as ~~a deposit or an~~
2 investment that qualifies for the credit and the total amount of the
3 credit to which the taxpayer is entitled for the year. Certificates
4 shall be issued in the order that the applications are received.

5 (3) Provide an annual listing to the board, in the form or manner
6 agreed upon by the board and the California Organized Investment
7 Network within the Department of Insurance, or its successor, of
8 the taxpayers who were issued certificates, their respective
9 National Association of Insurance Commissioners company
10 number and employer's tax identification number, the amount of
11 the qualified investment made by each taxpayer, and the total
12 amount of qualified investments.

13 (f) For purposes of this section:

14 (1) "Qualified investment" means a deposit or loan that does
15 not earn interest, or an equity investment, or an equity-like debt
16 instrument that conforms to the ~~specification~~ *specifications* for
17 these instruments as prescribed by the United States Department
18 of the Treasury, Community Development Financial Institutions
19 Fund, or its successor. All qualified investments must be equal to
20 or greater ~~then~~ *than* fifty thousand dollars (\$50,000) and be made
21 for a minimum duration of 60 months.

22 (2) "Community development financial institution" means a
23 private financial institution located in this state that is certified by
24 the California Organized Investment Network within the
25 Department of Insurance, or its successor, that has community
26 development as its primary mission, and that lends in urban, rural,
27 or reservation-based communities in this state. A community
28 development financial institution may include a community
29 development bank, a community development loan fund, a
30 community development credit union, a microenterprise fund, a
31 community development corporation-based lender, and a
32 community development venture fund.

33 (g) (1) If a qualified investment is withdrawn before the end
34 of the 60th month and not reinvested in another community
35 development financial institution within 60 days, there shall be
36 added to the "tax," as defined in Section 28 of Article XIII of the
37 California Constitution, for the year in which the withdrawal
38 occurs, the entire amount of any credit previously allowed under
39 this section.

(2) If a qualified investment is reduced before the end of the 60th month, but not below fifty thousand dollars (\$50,000), there shall be added to the “tax,” as defined in Section 28 of Article XIII of the California Constitution, for the taxable year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the year.

(h) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” for the next four years, or until the credit has been exhausted, whichever occurs first.

(i) The board shall, as requested by the California Organized Investment Network within the Department of Insurance, or its successor, advise and assist in the administration of this section.

(j) This section shall remain in effect only until December 31, 2005, and as of that date is repealed.

~~(j)~~

(k) The amendments made to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 2001.

~~SEC. 2.—~~

SEC. 3. Section 17053.57 of the Revenue and Taxation Code is amended to read:

17053.57. (a) For each taxable year beginning on or after January 1, 1997, and before January 1, 2005, there shall be allowed as a credit against the amount of “net tax,” as defined in Section 17039, an amount equal to 20 percent of the amount of each qualified investment made by a taxpayer during the taxable year into a community development financial institution.

(b) Notwithstanding any other provision of this part, no credit is allowed under this section unless the California Organized Investment Network of the Department of Insurance, or its successor, certifies that the investment described in subdivision (a) qualifies for the credit under this section and certifies the total amount of the credit allocated to the taxpayer pursuant to this section. The aggregate amount of qualified investments made by all taxpayers pursuant to Section 12209, this section, and Section 23657 shall not exceed ten million dollars (\$10,000,000) for each calendar year. However, if the aggregate amount of qualified investments made in any calendar year is less than ten million dollars (\$10,000,000), the difference may be carried over to the

1 next year, and any succeeding year during which this section
2 remains in effect, and added to the aggregate amount authorized
3 for those years.

4 (c) The Community Development Financial Institution shall
5 do all of the following:

6 (1) Apply to the California Organized Investment Network
7 within the Department of Insurance, or its successor, for
8 certification of its status as a Community Development Financial
9 Institution.

10 (2) Apply to the California Organized Investment Network
11 within the Department of Insurance, or its successor, on behalf of
12 the taxpayer for certification of the amount of the investment and
13 the credit amount allocated to the taxpayer, obtain the certification,
14 and retain a copy of the certification.

15 (3) Obtain the taxpayer's identification number, or in the case
16 of a partnership, the taxpayer identification numbers of all the
17 partners for tax administration purposes and provide this
18 information to the California Organized Investment Network
19 within the Department of Insurance, or its successor, with the
20 application required in paragraph (2).

21 (4) Provide an annual listing to the Franchise Tax Board, in the
22 form and manner agreed upon by the Franchise Tax Board and the
23 California Organized Investment Network within the Department
24 of Insurance, or its successor, of the names and taxpayer
25 identification numbers of any taxpayer who makes any withdrawal
26 or partial withdrawal of a qualified investment before the
27 expiration of 60 months from the date of the qualified investment.

28 (d) The California Organized Investment Network within the
29 Department of Insurance, or any successor thereof, shall do all of
30 the following:

31 (1) Accept applications for certification from financial
32 institutions and issue certificates that the applicant is a Community
33 Development Financial Institution qualified to receive qualified
34 investments.

35 (2) Accept applications for certification from any Community
36 Development Financial Institution on behalf of the taxpayer and
37 issue certificates to taxpayers in an aggregate amount that may not
38 exceed the limit specified in subdivision (b). The certificate shall
39 include the amount eligible to be made as an investment that
40 qualifies for the credit and the total amount of the credit to which

1 the taxpayer is entitled for the taxable year. Certificates shall be
2 issued in the order in which the applications are received.

3 (3) Provide an annual listing to the Franchise Tax Board, in a
4 form or manner agreed upon by the Franchise Tax Board, and the
5 California Organized Investment Network within the Department
6 of Insurance, or its successor, of the taxpayers who were issued
7 certificates, their respective tax identification numbers, the
8 amount of the qualified investment made by each taxpayer, and the
9 total amount of all qualified investments.

10 (e) For purposes of this section:

11 (1) “Qualified investment” means a deposit or loan that does
12 not earn interest, or an equity investment, or an equity-like debt
13 instrument that conforms to the specifications for these
14 instruments as prescribed by the United States Department of the
15 Treasury, Community Development Financial Institutions Fund,
16 or its successor. All qualified investments must be equal to or
17 greater than fifty thousand dollars (\$50,000) and be made for a
18 minimum duration of 60 months.

19 (2) “Community development financial institution” means a
20 private financial institution located in this state that is certified by
21 the California Organized Investment Network within the
22 Department of Insurance, or its successor, that has community
23 development ~~or affordable low income housing~~ as its primary
24 mission, and that lends in urban, rural, or reservation-based
25 communities in this state. A community development financial
26 institution may include a community development bank, a
27 community development loan fund, a community development
28 credit union, a microenterprise fund, a community development
29 corporation-based lender, and a community development venture
30 fund.

31 (f) (1) If a qualified investment is withdrawn before the end of
32 the 60th month and not reinvested in another Community
33 Development Financial Institution within 60 days, there shall be
34 added to the “net tax,” as defined in Section 17039, for the taxable
35 year in which the withdrawal occurs, the entire amount of any
36 credit previously allowed under this section.

37 (2) If a qualified investment is reduced before the end of the
38 60th month, but not below fifty thousand dollars (\$50,000), there
39 shall be added to the “net tax,” as defined in Section 17039, for

1 the taxable year in which the reduction occurs, an amount equal to
2 20 percent of the total reduction for the taxable year.

3 (g) In the case where the credit allowed by this section exceeds
4 the “net tax,” the excess may be carried over to reduce the “net
5 tax” for the next four taxable years, or until the credit has been
6 exhausted, whichever occurs first.

7 (h) The Franchise Tax Board shall, as requested by the
8 California Organized Investment Network within the Department
9 of Insurance or its successor, advise and assist in the administration
10 of this section.

11 (i) This section shall remain in effect only until December 1,
12 2005, and as of that date is repealed.

13 (j) The amendments made to this section by the act adding this
14 subdivision shall apply only to taxable years beginning on or after
15 January 1, 2001.

16 ~~SEC. 3.—~~

17 *SEC. 4.* Section 23657 of the Revenue and Taxation Code is
18 amended to read:

19 23657. (a) For each taxable year beginning on or after
20 January 1, 1997, and before January 1, 2005, there shall be allowed
21 as a credit against the amount of “tax,” as defined in Section
22 23036, an amount equal to 20 percent of the amount of each
23 qualified investment made by a taxpayer during the taxable year
24 into a community development financial institution.

25 (b) Notwithstanding any other provision of this part, no credit
26 is allowed under this section unless the California Organized
27 Investment Network within the Department of Insurance, or its
28 successor, certifies that the investment described in subdivision (a)
29 qualifies for the credit under this section and certifies the total
30 amount of the credit allocated to the taxpayer pursuant to this
31 section. The aggregate amount of qualified investments made by
32 all taxpayers pursuant to this section, Section 12209, and Section
33 17053.57 shall not exceed ten million dollars (\$10,000,000) for
34 each calendar year. However, if the aggregate amount of qualified
35 investments made in any calendar year is less than ten million
36 dollars (\$10,000,000), the difference may be carried over to the
37 next year, and any succeeding year during which this section
38 remains in effect, and added to the aggregate amount authorized
39 for those years.

1 (c) The Community Development Financial Institution shall
2 do all of the following:

3 (1) Apply to the California Organized Investment Network
4 within the Department of Insurance, or its successor, for
5 certification of its status as a Community Development Financial
6 Institution.

7 (2) Apply to the California Organized Investment Network
8 within the Department of Insurance, or its successor, on behalf of
9 the taxpayer, for certification of the amount of the investment and
10 the credit amount allocated to the taxpayer, obtain the certification,
11 and retain a copy of the certification.

12 (3) Obtain the taxpayer's identification number, or in the case
13 of an "S corporation," the taxpayer identification numbers of all
14 the shareholders for tax administration purposes and provide this
15 information to the California Organized Investment Network
16 within the Department of Insurance, or its successor, with the
17 transmittal required in paragraph (3).

18 (4) Provide an annual listing to the Franchise Tax Board, in the
19 form and manner agreed upon by the Franchise Tax Board and the
20 California Organized Investment Network within the Department
21 of Insurance, or its successor, of the names and taxpayer
22 identification numbers of any taxpayer who makes any withdrawal
23 or partial withdrawal of a qualified ~~deposit~~ *investment* before the
24 expiration of 60 months from the date of the qualified investment.

25 (d) The California Organized Investment Network within the
26 Department of Insurance, or any successor thereof, shall do all of
27 the following:

28 (1) Accept applications for certification from financial
29 institutions and issue certificates that the applicant is a Community
30 Development Financial Institution qualified to receive qualified
31 investments.

32 (2) Accept applications for certification from any Community
33 Development Financial Institution on behalf of the taxpayer and
34 issue certificates to taxpayers in an aggregate amount that may not
35 exceed the limit specified in subdivision (b). The certificate shall
36 include the amount eligible to be made as an investment that
37 qualifies for the credit and the total amount of the credit to which
38 the taxpayer is entitled for the taxable year. Certificates shall be
39 issued in the order that the applications are received.

(3) Provide an annual listing to the Franchise Tax Board, in the form or manner agreed upon by the Franchise Tax Board and the California Organized Investment Network within the Department of Insurance, or its successor, of the taxpayers who were issued certificates, their respective tax identification numbers, the amount of the qualified investment made by each taxpayer, and the total amount of all qualified investments.

(e) For purposes of this section:

(1) “Qualified investment” means a deposit or loan that does not earn interest, or an equity investment, or an equity-like debt instrument that conforms to the specifications for these instruments as prescribed by the United States Department of the Treasury, Community Development Financial Institutions Fund, or its successor. All qualified investments must be equal to or greater than fifty thousand dollars (\$50,000) and be made for a minimum duration of 60 months.

(2) “Community development financial institution” means a private financial institution located in this state that is certified by the California Organized Investment Network within the Department of Insurance, or its successor, that has community development as its primary mission, and that lends in urban, rural, or reservation-based communities in this state. A community development financial institution may include a community development bank, a community development loan fund, a community development credit union, a microenterprise fund, a community development corporation-based lender, and a community development venture fund.

(f) (1) If a qualified investment is withdrawn before the end of the 60th month and not reinvested in another Community Development Financial Institution within 60 days, there shall be added to the “tax,” as defined in Section 23036, for the taxable year in which the withdrawal occurs, the entire amount of any credit previously allowed under this section.

(2) If a qualified investment is reduced before the end of the 60th month, but not below fifty thousand dollars (\$50,000), there shall be added to the “tax,” as defined in Section 23036, for the taxable year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the taxable year.

(g) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” for

1 the next four taxable years, or until the credit has been exhausted,
2 whichever occurs first.

3 (h) The Franchise Tax Board shall, as requested by the
4 California Organized Investment Network within the Department
5 of Insurance, or its successor, advise and assist in the
6 administration of this section.

7 (i) This section shall remain in effect only until December 1,
8 2005, and as of that date is repealed.

9 (j) The amendments made to this section by the act adding this
10 subdivision shall apply only to taxable years beginning on or after
11 January 1, 2001.

12 ~~SEC. 4.—~~

13 *SEC. 5.* This act provides for a tax levy within the meaning
14 of Article IV of the Constitution and shall go into immediate
15 effect.

